



State of New Jersey

Highlands Water Protection and Planning Council
100 North Road (Route 513)
Chester, New Jersey 07930-2322
(908) 879-6737
(908) 879-4205 (fax)
www.highlands.state.nj.us



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

CARL J. RICHKO
Chairperson

LISA J. PLEVIN
Executive Director

May 28, 2021

VIA EMAIL ONLY:

Richard Phelan, Administrator
Town of Clinton
43 Leigh Street
Clinton, NJ 08809

David Meiskin
123 Route 33 East, Suite 204
Manalapan, NJ 07726

Re: Consistency Determination #CD21-02684
Clinton Commons, Block 14 Lot 32
Town of Clinton, Hunterdon County

Finding: Consistent Subject to Specified Conditions

Dear Mr. Phelan and Mr. Meiskin:

The Highlands Council is in receipt of the above-referenced application for a Consistency Determination. The application was received by the Highlands Council on January 29, 2021. The proposed project, located in the Planning Area of the Town of Clinton, will develop 56 townhouses and 30,250 square feet of retail development consisting of three pad sites. The proposed site improvements also include roadways, landscaping, stormwater collection system, and stormwater basin.

Highlands Council staff has completed the review of the proposed project for consistency with the Highlands Act, the Regional Master Plan, and the Highlands Council Project Review Standards. Attached please find our Consistency Determination, which finds that the project is "Consistent Subject to Specified Conditions." Please be advised that Highlands Council conditions shall be incorporated into any action taken by the Planning Board regarding this project; however, the Planning Board may modify the wording of condition(s), as long as the spirit and intent of the condition(s) remains. Final planning documents must include all required design modifications and/or provide other appropriate information as to the mechanisms by which all Highlands Council conditions will be satisfied.

Should you have any questions regarding this Consistency Determination, please do not hesitate to contact Corey Piasecki, at corey.piasecki@highlands.nj.gov or 908-879-6737 ext. 129.

Sincerely,



Lisa J. Plevin
Executive Director

Enclosure

c: Allison Witt, Land Use Board Secretary, Town of Clinton



**State of New Jersey
Highlands Water Protection and Planning Council
CONSISTENCY DETERMINATION**



Highlands Municipal Project Review # CD 21-02684/March 5, 2021
Clinton Commons
65 1/2 Center Street
Block 14, Lot 32
Town of Clinton, Hunterdon County

Applicant:
Clinton Moebus 34, LLC
123 Route 33 East, Suite 204
Manalapan, NJ 07726

PROJECT INFORMATION

Highlands LUCM:	Existing Community Zone	Highlands Area:	Planning Area
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Project Summary: Development of 56 townhouses and 30,250 square feet of retail development consisting of three pad sites. The submitted site plans depict proposed commercial development of a food market, retail and a gas/convenience store. The proposed site improvements also include roadways, landscaping, stormwater collection system and stormwater basin. Approximately 12 acres of the parcel will be dedicated to the Town of Clinton as open space.

- Information Received on January 29, 2021:
1. Cover letter
 2. One set of Original signed application forms for Highlands Referral Ordinance
 3. Copy of application package submitted to Town including all plans and reports
 4. Copy of application package submitted to NJDEP
 5. Copy of application package submitted to Hunterdon County Planning Board
 6. Copy of application package submitted to Hunterdon County Soil Erosion Districts.
 7. One CD containing electronic copies of everything submitted to all agencies and a copy of data required by the Highlands Council
- Supplemental Information Received on February 24, 2021:
1. Moebus Soil Investigation
 2. Clinton Commons Karstic Geology Investigation
- Supplemental Information Received on March 19, 2021
1. Executed Town of Clinton Affordable Housing Settlement Agreement- November 5, 2018
- Supplemental Information Received on May 12, 2021
1. Flood Hazard Area Individual Permit, Flood Hazard Area Verification- Method 3, Freshwater Wetlands General Permit 11
- Supplemental Information Received on May 13, 2021
1. Amended Site Plan- April 23, 2021
 2. Amended Site Plan South- April 18, 2021
 3. Grading Plan- North- April 18, 2021
 4. Grading Plan- South- April 18, 2021
 5. Drainage and Utility Plan North- April 18, 2021
 6. Drainage and Utility Plan South- April 18, 2021
- Supplemental Information Received on May 14, 2021
1. US Fish and Wildlife Eagle Guidance Letter, May 13, 2021

PROJECT REVIEW**Finding: Consistent with Conditions**

Highlands Resources:

- A. Total Forest Area: Approximately two acres of this property is classified as Total Forest Area. The forest area is situated along the adjacent South Branch Raritan River and will not be affected by the proposed development.
- B. Critical Wildlife Habitat: Approximately 2.5 acres of this property is mapped as Critical Wildlife Habitat for Bald Eagle. An active bald eagle nest has been identified in appropriate habitat immediately west of the subject property. Consultation with NJDEP-Division of Fish and Wildlife and the US Fish and Wildlife Service (USFWS) was initiated by the applicant. A letter from USFWS, signed 5/13/21, documents the guidance recommended to avoid impacts to the nesting site. This will include a timing restriction on construction between August 1 and December 31 in any year, installation of a fence at the boundary of the Highlands Open Waters Protection Area, to reduce potential for pedestrian incursion into habitat, redesign of the project to condense the building footprint away from the nest and planting of native vegetation between the nest and planned development. The applicant has received NJDEP permitting for the project which also included consultation on the bald eagle nest. A timing restriction similar to USFWS is imposed as a condition of the freshwater wetland permit.
- C. Open Waters Protection Area: Approximately twelve (12) acres of the parcel is mapped as Highlands Open Waters Protection Area in association with the adjacent South Branch Raritan River. The stormwater discharge is proposed to be located within the Open Waters Protection Area.
- D. Carbonate Rock: The entire property is mapped for carbonate rock.
- E. Wellhead Protection Area: Approximately 10.4 acres and 19.2 acres of the site is mapped in the Tier 1 and Tier 2 Wellhead Protection Areas, respectively.
- F. Prime Groundwater Recharge: Approximately 0.19 acres of the site is mapped as Prime Groundwater Recharge. The proposed development will not affect this resource.
- G. Utilities/Infrastructure:

Water/wastewater:

Public water and sewer service is proposed to be provided by the Town of Clinton Water and Sewer Departments, respectively. The site lies in the water purveyor area, and in the currently adopted Town of Clinton sewer service area.

Stormwater Management Plan:

One stormwater infiltration basin collecting runoff from the proposed roads, driveways and portions of the lawns is proposed. This basin will be used to meet all stormwater requirements for water quality, quantity (peak reduction) and recharge. According to the provided Low Impact Development checklist, a grass swale area has been proposed behind the proposed residential development to slow runoff and provide water quality benefits. Due to karst underlying conditions, infiltration is confined to the extents of the basin situated at the most downstream location of the site.

CONDITIONS

Condition #1: (*Applicable to use of the facility or any portion of the facility for a Major PCS.*) Where the permitted use or structure is classified as a Major Potential Contaminant Source (PCS) and is proposed to be located in a Carbonate Rock Area determined to contain or have the potential to develop karst features, facilities shall be designed in a manner that prevents the unintentional discharge of toxic or hazardous pollutants to groundwater, surface waterbodies, or the land surface, from all internal and external areas, including loading, storage, and transfer areas.

Additionally, when a PCS is proposed to be located within a Tier I Wellhead Protection Area, all provisions, and standards applicable to Major PCS facilities contained in the Highlands RMP Project Review Standards shall apply, inclusive of requirements for Best Management Practices and Operations and Contingency Plans. If applicable, the Operations and Contingency Plan shall be submitted to the Highlands Council for review.

Basis for Condition:

Highlands Council Project Review Standards, Section 4.5 CARBONATE ROCK and 4.5.5 Potential Contaminant Sources and Section 4.9 WELLHEAD PROTECTION and 4.9.2 Potential Contaminant Sources.

As applicable, the applicant shall prepare an Operations and Contingency Plan in accordance with Section 4.9.2.C & D for Highlands Council approval. A listing of Major PCSs is attached for reference.

See **Section 4.9.2.B 1-8 Compliance Mechanisms** which provides for alternative submittals as equivalent to best management practices of 4.9.2 and can be provided in lieu of Operations and Contingency Plans.

Condition #2: The applicant has proposed a large-scale infiltration basin to manage stormwater runoff generated by the proposed development. The applicant shall incorporate low impact development/green infrastructure strategies for decentralized stormwater management on the site to the maximum extent practicable. Possible strategies to consider include, but are not limited to, pervious paving, bioretention basins/rain gardens, vegetated swales, vegetated roofs (or partial vegetated roofs) and cisterns.

Following incorporation of these strategies, the Stormwater Management Report, Stormwater Management Maintenance Manual and Low Impact Development Checklist for the site shall be revised to reflect the changes and provided to the Highlands Council for review. A robust description of the proposed green infrastructure strategy for the site shall be provided. It would be helpful to include a Green Infrastructure Exhibit in the site plan package.

Basis for Condition:

Highlands Council Project Review Standards, Section 5.4.2.H Low Impact Development

RMP Objective 2G5b: Require Low Impact Development and other Best Management Practices standards for stormwater management to minimize the discharge of stormwater-entrained pollutants to ground and surface waters.

RMP Objective 6N2a: Implementation of on-site stormwater management features that maintain, restore, and enhance the pre-existing natural drainage patterns of the site.

RMP Objective 6N2d: Minimum requirements that stormwater management systems employ a “design with nature” approach.

RMP Objective 6N2e: Minimum requirements for use of grass channels, dry swales, wet swales, infiltration basins, bio-swales and water gardens, green roofs, and other low impact approaches to attenuate and control stormwater and provide multiple environmental benefits.

Condition #3: The site plan proposes 480 parking spaces, 174 more than required by local zoning. Unless an actual demonstrated need for the additional spaces is identified, the applicant should consider reducing the number of spaces to reduce the impervious coverage on the site. **If a need is a demonstrated, the applicant should consider the installation of porous asphalt parking spacing as a green infrastructure practice to offset the inclusion of additional impervious surface beyond regulatory requirements.**

Basis for Condition:

Highlands Council Project Review Standards, Section 5.4.2.H Low Impact Development

RMP Low Impact Development Program

The Regional Master Plan promotes site design measures which utilize low impact development practices as a key to reducing surface runoff pollution. Similarly, reducing surface parking requirements and encouraging shared parking also allows for reduced impervious surface areas.

RMP Objective 6N2b: Limitations on the amount of impervious cover allowed on a site as a means to protect and increase stormwater infiltration and reduce stormwater runoff.

Condition #4: A Landscape Plan was not included in the application materials. It is recommended that the Highlands Recommended Native Plantings (*list attached*) be used to provide appropriate landscaping throughout the site and an enhanced landscaping plan for the portion of the site abutting the Highlands Open Waters Protection Area. The Landscaping Plan should include drought tolerant, indigenous species to the maximum extent feasible, exclude invasive species, and should specifically exclude species such as Callery pear and Japanese barberry. This plan shall be submitted to the Highlands Council for review.

Basis for Condition:

Highlands Council Project Review Standards, Section 5.2 Low Impact Development. *See Also Highlands Council Recommended Native Plants for the Highlands Region.*

A landscape plan shall be submitted with each project which incorporates native, drought-tolerant, disease-resistant plant species and does not include invasive plant species. Natural landscaping shall be considered for use when feasible.

Non-native and invasive species disrupt local ecosystems and can prevent regeneration of indigenous plant species. Use of native, drought-tolerant species should minimize watering needs while increasing chances of achieving hardier, longer-lasting landscaping elements, by taking advantage of plant adaptations to local conditions including climate, soils, insects, fauna, etc.

Condition #5: Copies of the final approved site plans (one digital copy), supporting documents, and approving resolution shall be submitted to the Highlands Council.

Basis for Condition:

As required under Checklist Ordinance, no Application for Development may be considered by the Town land use board until the project has been deemed consistent by the Highlands Council. It is the responsibility of the Highlands Council to ensure that the project as approved is implemented.

Condition #6: Compliance with the recommendations found in the US Fish and Wildlife Service (USFWS) letter, signed 5/13/21, documenting the recommendations to avoid impacts to the bald eagle nesting site. This includes a timing restriction on construction between August 1 and December 31 in any year, installation of a fence at the boundary of the Highlands Open Waters Protection Area, to reduce potential for pedestrian incursion into habitat, and plant native trees in the open space between the nest and proposed food market.

Basis for Condition:

Approximately 2.5 acres of this property is mapped as Critical Wildlife Habitat for Bald Eagle. An active bald eagle nest has been identified in appropriate habitat immediately west of the subject property.

**Table 1B – Recommended Native Plants – Hunterdon County
 Trees & Shrubs**

Scientific Name	Common Name	Growth Habit	Wetland Status ¹	Height (ft.)	Legal Status	Drought Tolerant	NJ Stormwater BMP Manual	NRCS Riparian Forest Buffer Conservation Practice Std.
<i>Acer rubrum</i>	red maple	Tree	FAC	40-60		X	X	X
<i>Acer saccharinum</i>	silver maple	Tree	FACW	50-70			X	
<i>Acer saccharum</i>	sugar maple	Tree, Shrub	FACW	90				X
<i>Alnus serrulata</i>	hazel alder	Tree, Shrub	OBL	to 20			X	
<i>Amelanchier canadensis</i>	Canadian serviceberry	Tree, Shrub	FAC	20-30		X		X
<i>Asimina triloba</i>	pawpaw	Tree, Shrub	FAC	15-40	NJ Endangered			
<i>Betula lenta</i>	sweet birch	Tree	FACU	50-55				
<i>Betula nigra</i>	river birch	Tree	FACW	80			X	X
<i>Betula populifolia</i>	gray birch	Tree	FAC	20-25		X	X	
<i>Carpinus caroliniana</i>	American hornbeam	Tree, Shrub	FAC	40-60		X	X	
<i>Carya glabra</i>	pignut hickory	Tree	FACU-	80-135			X	
<i>Ceanothus americanus</i>	New Jersey tea	Subshrub, Shrub	--	3		X		
<i>Celtis occidentalis</i>	common hackberry	Tree, Shrub	FAC	40-60		X	X	X
<i>Cephalanthus occidentalis</i>	common buttonbush	Tree, Shrub	OBL	8			X	X
<i>Cercis canadensis</i>	eastern redbud	Tree, Shrub	UPL, FACU	20-25	NJ Endangered	X	X	
<i>Chamaecyparis thyoides</i>	Atlantic white cedar	Tree	OBL	80			X	X
<i>Chamaedaphne calyculata</i>	leatherleaf	Shrub	OBL	4				
<i>Cornus florida</i>	flowering dogwood	Tree, Shrub	FACU-, FACU	20-40			X	
<i>Cornus sericea</i>	redosier dogwood	Tree, Shrub	FACW+	6-10			X	X
<i>Diospyros virginiana</i>	common persimmon	Tree	FAC-	35-60				
<i>Fagus grandifolia</i>	American beech	Tree	FACU	50-70			X	
<i>Fraxinus americana</i>	white ash	Tree	FACU	50-70		X	X	X
<i>Fraxinus pennsylvanica</i>	green ash	Tree	FACU	40-60		X	X	X
<i>Hamamelis virginiana</i>	American witchhazel	Tree, Shrub	FAC	15-20		X	X	X
<i>Ilex verticillata</i>	common winterberry	Tree, Shrub	FACW+	6-10				X
<i>Juniperus virginiana</i>	eastern redcedar	Tree	FACU+	40-50		X	X	
<i>Lindera benzoin</i>	northern spicebush	Tree, Shrub	FACW	6-12				X
<i>Liquidambar styraciflua</i>	sweetgum	Tree	FAC	60-80			X	X
<i>Liriodendron tulipifera</i>	tuliptree	Tree	FACU	70-90			X	
<i>Morella pensylvanica</i>	northern bayberry	Tree, Shrub	FAC	5-12				

Table 1B – Hunterdon County con’t.

Scientific Name	Common Name	Growth Habit	Wetland Status ¹	Height (ft.)	Legal Status	Drought Tolerant	NJ Stormwater BMP Manual	NRCS Riparian Forest Buffer Conservation Practice Std.
<i>Nyssa sylvatica</i>	blackgum	Tree	FAC	60			X	X
<i>Photinia pyrifolia</i>	red chokeberry	Shrub	FACW	5				
<i>Pinus rigida</i>	pitch pine	Tree	FACU	40-80			X	X
<i>Pinus virginiana</i>	Virginia pine	Tree	FACU	70		X	X	
<i>Platanus occidentalis</i>	American sycamore	Tree	FACW	80			X	X
<i>Prunus serotina</i>	black cherry	Tree, Shrub	FACU	50-60			X	
<i>Quercus alba</i>	white oak	Tree	FAC+	50-70		X	X	X
<i>Quercus coccinea</i>	scarlet oak	Tree	UPL	40-50		X	X	
<i>Quercus ilicifolia</i>	bear oak	Tree, Shrub	--	3-12				
<i>Quercus macrocarpa</i>	bur oak	Tree, Shrub	FAC-	70-80				
<i>Quercus palustris</i>	pin oak	Tree	FAC, FACW	50-70		X	X	X
<i>Quercus prinus</i>	chestnut oak	Tree	UPL	60-70		X	X	
<i>Quercus rubra</i>	northern red oak	Tree	FACU-	50-70		X	X	X
<i>Quercus stellata</i>	post oak	Tree	UPL	30-40			X	
<i>Quercus velutina</i>	black oak	Tree	UPL	50-60		X		
<i>Rhus copallinum</i>	winged sumac	Tree, Shrub	NI	20-30				
<i>Rhus glabra</i>	smooth sumac	Tree, Shrub	UPL	20-30				
<i>Ribes americanum</i>	American black currant	Shrub	FACW	3				
<i>Ribes triste</i>	red currant	Shrub	OBL	2				
<i>Salix discolor</i>	pussy willow	Tree, Shrub	FACW	20-40			X	
<i>Salix nigra</i>	black willow	Tree	FACW+	50-100			X	X
<i>Sassafras albidum</i>	sassafras	Tree, Shrub	FACU-	30-60		X	X	
<i>Spiraea alba</i>	white meadowsweet	Shrub	FACW	3				
<i>Spiraea tomentosa</i>	steeplebush	Shrub	FACW	4			X	
<i>Symphoricarpos albus</i>	common snowberry	Subshrub, Shrub	FACU	3				
<i>Symphoricarpos orbiculatus</i>	coralberry	Shrub	FACU	2				
<i>Taxus canadensis</i>	Canada yew	Shrub	FAC	5			X	
<i>Tilia americana</i>	American basswood	Tree	FACU	50-70			X	
<i>Vaccinium angustifolium</i>	lowbush blueberry	Subshrub, Shrub	FACU	2		X	X	
<i>Viburnum dentatum</i>	southern arrowwood	Shrub	FACW-	6-15		X		X
<i>Viburnum lentago</i>	nannyberry	Tree, Shrub	FAC	15-20			X	
<i>Viburnum prunifolium</i>	blackhaw	Tree, Shrub	FACU	15-20		X	X	

1. See Table 8, pg 33, for Wetland Status Indicator code explanations.